

**IN THE UNITED STATES DISTRICT COURT FOR
THE SOUTHERN DISTRICT OF WEST VIRGINIA**

HUNTINGTON DIVISION

KELVIN ANDRE SPOTTS,

Movant,

v.

CIVIL ACTION NO. 3:12-00354
CRIMINAL ACTION NO. 3:98-00047-01

UNITED STATES OF AMERICA ,

Respondent.

ORDER

Pending before the Court is Movant Kelvin Andre Spotts' Objections to the Proposed Findings and Recommendation of the Magistrate Judge issued on May 3, 2012. [ECF No. 1228]. As clearly and correctly stated in the Proposed Findings and Recommendations, Movant's *pro se* Motion to Vacate, Set Aside, or Correct Sentence pursuant to 28 U.S.C. § 2255 [ECF No. 1211] is a successive application for relief, and the Fourth Circuit Court of Appeals denied his petition for an order authorizing this Court to consider his successive application. [ECF No. 1226]. Thus, as stated in the Proposed Findings and Recommendations, this Court lacks jurisdiction to consider Movant's application.


The Court has reviewed Movant's objection and finds no basis for this Court to exercise jurisdiction on his successive § 2255 motion. Accordingly, the Court **ACCEPTS** and **INCORPORATES** the Proposed Findings and Recommendations of the Magistrate Judge, **DENIES**

the objections, **DENIES** Movant's Motion to Vacate, Set Aside, or Correct Sentence pursuant to § 2255, and **DISMISSES** this case **WITH PREJUDICE** from the docket of this Court.

The Court additionally has considered whether to grant a certificate of appealability. *See* 28 U.S.C. § 2253(c). A certificate will not be granted unless there is "a substantial showing of the denial of a constitutional right." *Id.* at § 2253(c)(2). The standard is satisfied only upon a showing that reasonable jurists would find that any assessment of the constitutional claims by this Court is debatable or wrong and that any dispositive procedural ruling is likewise debatable. *Miller-El v. Cockrell*, 537 U.S. 322, 336-38 (2003); *Slack v. McDaniel*, 529 U.S. 473, 484 (2000); *Rose v. Lee*, 252 F.3d 676, 683-84 (4th Cir. 2001). The Court concludes that the governing standard is not satisfied in this instance. Accordingly, the Court **DENIES** a certificate of appealability.

The Court **DIRECTS** the Clerk to send a copy of this Order to Magistrate Judge Eifert, counsel of record, and any unrepresented parties.

ENTER: May 15, 2012



ROBERT C. CHAMBERS
UNITED STATES DISTRICT JUDGE